

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

WENDELL RENARD LINDSAY)	CASE NO. 1:13cv309
)	
)	
Petitioner,)	JUDGE JOHN R. ADAMS
)	
vs.)	
)	
TERRY A. TIBBALS,)	
)	
)	MEMORANDUM OF OPINION AND
Respondent.)	ORDER
)	
)	

This action is before the Court upon objections filed by Petitioner, Wendell Renard Lindsay to the Report and Recommendation (“the Report”) of the Magistrate Judge. Doc.12. The Report recommends this Court to grant Respondent’s motion to dismiss, or stay, the mixed petition (doc. 6) and order petitioner to elect either to dismiss his fourth, fifth, and sixth grounds for relief or to dismiss his petition without prejudice. Petitioner filed an objection to the Report, seeking a stay for ground six, dismissal without prejudice of grounds four and five, and to proceed with grounds one, two, and three. Doc. 14. Petitioner elects, if the Court denies his request to for a stay of ground six, that this ground also be dismissed without prejudice.

The Report sets forth the factual and procedural history of this case. Doc. 12. Based upon the uncontested fact that many of Petitioner’s claims are not yet exhausted in State Court, the Report concludes that Petitioner is required to elect whether to dismiss the unexhausted grounds, or dismiss his petition in its entirety. The Report fully addresses why a stay on these grounds would not be appropriate under the specific facts of this case. In his objection,

Petitioner simply reiterates his argument with regard to ground six that he stated in his response to Respondent's motion to dismiss. Petitioner does not point to any specific error in the Report. As such, the Court overrules Petitioner's objection.

Upon due consideration, the Court overrules the objection and adopts the Report and Recommendation. Therefore, Respondent's motion to dismiss, or stay, mixed petition is hereby GRANTED. Doc. 6. Petitioner's election to DISMISS grounds four, five and six and to proceed solely on grounds one, two, and three, is GRANTED. Pursuant to the Report, Respondent shall file its brief within 30 days of the date of this Order. The matter is hereby returned to the Magistrate Judge for further proceedings.

IT IS SO ORDERED.

February 6, 2014

/s/ John R. Adams
JUDGE JOHN R. ADAMS
UNITED STATES DISTRICT COURT